IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR.JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 12680 of 2006(H)

PETITIONER:

V.N.GIRIJA, AGED 42, W/O.ADV.P.G.RAJEEV,
PANNAKEN MATTEL HOUSE, P.O.PUDUPPARIYARAM,
IDUKKI DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:
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1. **THE ASSISTANT EDCUATIONAL OFFICER,**
   SUB DIVISIONAL OFFICER, OFFICE OF A.E.O.
   THODUPUZHA.

2. **M.S.VENU, S/O.M.V.SANKARAN,**
   MELATHUPARAMBIL HOUSE, V.R.PURAM, POTTA,
   CHALAKKUDY, THRISSUR DISTRICT.

3. **THE PERINGOTTUKARA CHITS LTD.,**
   REGD.OFFICE, THRISSUR.

4. **THE SECRETARY TO THE GOVERNMENT,**
   EDUCATION DEPRTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SRI.N.M.MADHU
SMT.C.DEVIKA RANI KAIMAL
GOVERNMENT PLEADERSRI. P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C JO.12680/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DT.8.2.06.

EXT.P2:- COPY OF THE LAWYER NOTICE ISSUED BY THE PETITIONER DT.9.4.06.

EXT.P3:- COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DT. 1.4.06.

RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE KURI RECEIPT DT.17.12.02.

EXT.R3(b):- COPY OF THE EMPLOYMENT CERTIFICATE DT.18.11.02.

EXT.R3(c):- COPY OF THE AGREEMENT DT.28.11.02 FOR RECOVERY FROM PAY.

EXT.R3(d):- COPY OF THE LAWYER NOTICE DT.19.7.05 ISSUED BY THE 3RD RESPONDENT.

EXT.R3(e):- COPY OF THE LETTER DT.31.1.06 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY/

tss

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

W.P.(C) No. 12680 of 2006 H

Dated this the 25th day of January, 2007

Judgment

Petitioner has stood as guarantor in a chitty transaction between respondent Nos.3 and 3. Petitioner had produced her salary certificate and executed an agreement undertaking to pay the liability of the principal debtor, respondent No.2, in case of default by him. The above agreement for recovery of money from pay was endorsed and countersigned by the employer as can be seen from Ext.R3 (c). The chitty company, respondent No.3, approached the Assistant Educational Officer, respondent No.1, when default occurred in repayment of the prized chitty amount. Accordingly, Ext.P3 order was issued by the AEO directing the teacher in charge of the school where the petitioner is working to recover a sum of Rs.5,000/- from her salary every month. In Sukumaran v. KSRTC (2002 (3) KLT 169) a Division Bench of this Court considered a similar question. The appellant in that case was an employee of KSRTC. He had stood as a surety for several loans taken by a few persons from the

Kerala State Financial Enterprises Ltd. When default occurred in repayment of loans, the KSFE had initiated recovery proceedings through the employer. The Division Bench held that notwithstanding the provisions contained in section 60 of the Code of Civil Procedure and article 102 of the Kerala Financial Code, Volume I, action taken by the employer was justifiable. The above judgment is affirmed by another Division Bench of this Court and we see no ground to differ from it merely because the transaction in this case was with a private company. The salary certificate was given by the petitioner which was endorsed by the employer. The employer also countersigned the undertaking of the employee to recover the amount from her salary. So, employer cannot go back from the same. Here, even though notice was issued, notice to the second respondent was not returned as served. Petitioner also did not take any further steps. It is not the case that the amount was already paid by the principal debtor and the amount demanded is not due. In these circumstances, we are unable to grant any relief in the writ petition. However, if the petitioner or second respondent principal debtor feels that the amount

demanded was incorrect or cannot be legally demanded, it is for them to approach the civil court for their remedy.

The writ petition is disposed of.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

W.P.(C) No.12680/2006 H

Judgment

Dated:25th January, 2007